IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Gulsher & Others Vs. State of Rajasthan
(D.B. Criminal Appeal No.483/2001)

D. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 13-7-2001 in Sessions Case No.19/2001 passed by Shri Narayan Sahai Sharma, RHJS, Additional Sessions Judge (Fast Track) Tonk.

Date of Judgment: May 25, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE GUMAN SINGH

Mrs. Sumati Bishnoi, for the appellants.

Mr. M.L.Goyal, Public Prosecutor for the State.
Mr. N. A. Naqvi, for the complainant.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

Challenge in this appeal is to the judgment dated July 13, 2001 of the learned Additional Sessions Judge (Fast Track) Tonk whereby the appellants, four in number, were convicted and sentenced as under:-

Appellants Gulsher, Fazroo, Zahoor Khan and Pannu Khan:
U/s.302/34 IPC:

Each to suffer imprisonment for life and fine of Rs.1000/-, in default to further suffer simple imprisonment for three months.

U/s.325/34 IPC:

Each to suffer simple imprisonment for one year and fine of Rs.500/-, in default to further suffer simple imprisonment for two months.

U/s.323/149 IPC:

Each to suffer simple imprisonment for six months and fine of Rs.200/-, in default to further suffer simple imprisonment for fifteen days.

U/s.447 IPC:

Each to suffer simple imprisonment for two months and fine of Rs.200/-, in default to further suffer simple imprisonment for fifteen days.

The substantive sentences were ordered to run concurrently.

2. It is the prosecution case that on February 13, 1999 SHO Police Station Mendwas reached at Sahadat Hospital Tonk and recorded parcha bayan (Ex.P-10) of injured Smt. Laddo (Pw.2) wherein she stated that on the said day around 12 O' Clock she and her sons Fareed and Liyakat were at their agricultural land where near the well they got constructed a house. While the engine was on by Fareed for the purpose of watering the crop, Gulsher, Ayub, Jahoor Khan and Pannu Khan came over there and asked Fareed to arrange fishing net. When Fareed declined to accede to their demand they became angry and started abusing and began to quarrel. Ayub gave blow with lathi on the person of Fareed, Gulsher then pushed Fareed down, took out the knife from his pocket and inflicted 2-3 knife blows on the chest of Fareed, Jahoor and Pannu gave blows with fists and legs. When she intervened she was beaten up by Jahoor and Pannu. As a result of injuries Fareed died on the spot. On that Parcha Bayan a case under sections 302, 447, 341 and 323/34 IPC was registered and investigation commenced. Necessary memos were drawn, statements of witnesses were recorded and after completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) Tonk. Charges under sections 447, 323, 302 and 325 read with 34

IPC were framed against the accused, who denied the charges and claimed trial. The prosecution in support of its case examined as may as 22 witnesses. In the explanation under Sec.313 Cr.P.C., the appellants claimed innocence. Two witnesses in defence were examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellants as indicated herein above.

3. Having weighed the material on record with the assistance of learned Senior counsel, learned Public Prosecutor and learned counsel for the complainant we notice that death of Fareed was homicidal in nature. As per Post Mortem Report (Ex.P-24) following ante mortem injuries were found on the dead body:-

1. Lacerated wound obliquely placed 2½ x ¼" x bone deep on the Rt. posterior parietal region ½" Rt. lateral to mid line.
2. Lacerated wound obliquely placed 1¼ x ¼ x bone deep on the Rt. posterior parietal region ½" Rt. lateral to inj.No.1 in the posterior end.
3. Abrasion ½" x ¼" on the mastoid region.
4. Abrasions (Two in no.) six of each is 1/8" x 1/8" on the left upper neck below Lt. angle of mandible.
5. Abrasion ½" x 1/10th on the lt. lower neck anteriorly.
6. Abrasion ½ x ¼ on the upper and outer part of Lt. shoulder.
7. Abrasion 1" x 1/8" on the upper inner part of Lt. arm
8. Stab wound obliquely placed elliptical with one acute angle directing downwards and medially size is ¾" x ¼" its mid part x thoracic cavity deep on the lt. upper chest 1" below junction of middle 1/3 and medial 1/3 Lt. clavicle 2" outer to sternum.
9. Stab wound vertically placed elliptical in shape with one angle obtuse directing downward and outwards towards left side size is ¾" x ¼" in the mid part x thoracic cavity deep on the mid chest on left sternal border 2½ below supra sternal noth.
10. Incised wound Horizontally placed elliptical in shape with one acute angle directing downward and inwards size is ½ x ¼

in the mid part x muscle deep on the outer part of lt. upper chest 2" below middle 1/3rd of lt. clavicle.

11. Stab wound obliquely placed elliptical in shape with one acute angle directing downward, upwards towards rt. side. Size is ¾" x ¼" in its mid part x thoracic cavity deep on the rt. lower chest on the lower sternal part near mid line.

12. Incised wound vertically placed elliptical in shape with one acute angle size is ½" x ¼" in its mid part x bone deep on the medial 1/3rd of rt. clavicle

13. Incised wound vertically placed elliptical in shape with one acute angle size is ½" x ¼" in its mid part x muscle deep on the rt. upper chest 2½" above rt. nipple 3" rt. lateral to mid line.

14. Abrasion ½" x ¼" on the rt. upper chest ¼" above rt. nipple.

15. Bruise 3" x ¾" on lt. lower chest posteriorly oblique.

In the opinion of Dr. V.K.Nigam (Pw.19) the cause of death was hemorrhage shock caused by injury to vital organs i.e. heart which leads to excessive bleeding.

4. Case of the prosecution is founded on the testimony of Smt.Laddo (Pw.2) and Liyakat (Pw.9), who had sustained injuries and whose presence is established at the time of incident. Coming to the evidence of Smt.Laddo we notice that she made improvements in her testimony at the trial. In her Parcha Bayan (Ex.P-10) she attributed sharp edged injuries received by Fareed to accused Gulsher but in her deposition at the trial she stated thus:-

"फजरू व गुलशेर दोनों के हाथों मे चाकू था। गुलशेर ने पहले फरीद के सीने में चाकू मारा। फिर फजरू ने चाकू मारा ... फरीद को चारों ने खत्म कर दिया।"

In her parcha bayan, she however stated that:-

"गुलशेर ने अपनी जेब से चाकू निकाल कर दो तीन चाकू फरीद के सीने पर मारे ... तभी जहूर खां व पन्नू भी फरीद को लातों घूसों से मारने लगे।"

5. Liyakat (Pw.9) in his cross examination stated as under:-

"यह सही है कि मुलजिमान जब आए तब इन्होने सबने अपने मुंह कपडे से ढक रखे थे और ढाटे बांध रखे थे।"

6. On analysing the evidence of Smt.Laddo and Liyakat from the point of view of trustworthiness we find that truth and falsehood are mixed in it. We therefore have to disengage the truth from the falsehood and to sift the grain from the chaff. It is now well settled that principle of falsus in uno falsus in omnibus (false in one thing, false in everything) does not apply to criminal trials and the evidence cannot be rejected in its entirety merely on the basis of few infirmities. The approach of the court must be whether the evidence of the witnesses read as a whole appears to have a ring of truth. Once that impression is formed it is necessary for the court to scrutinise the evidence more particularly keeping in view of the deficiencies, draw backs and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. It is not a sound rule for the reason that hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishments. In Arjun Vs. State of Rajasthan (AIR 1994 SC 2507) the Apex court indicated that consistent evidence of eye witnesses cannot be rejected merely on the ground that their evidence has not been accepted with regard to some other accused.

7. In the case on hand we find testimony of Smt.Laddo consistent qua accused Gulsher only. In so far as participation of other accused persons

are concerned, their presence at the time of incident could not be established beyond a reasonable doubt. Possibility of their over implication cannot be ruled out.

8. For these reasons, we dispose of instant appeal in the following terms:-

(i) We allow the appeal of appellants Zahoor Khan, Pannu Khan and Fazru and acquit them of the charges under sections 302/34, 325/34, 323/34 and 447 IPC. These appellants are on bail, they need not surrender and their bail bonds stand discharged.

(ii) While dismissing the appeal of appellant Gulsher, we instead of section 302/34 convict him under section 302 IPC and sentence him to suffer imprisonment for life and fine of Rs.1000/-, in default to further suffer three months simple imprisonment. We however acquit appellant Gulsher of the charge under sections 447, 323/34 and 325/34 IPC.

(iii) The impugned judgment of learned trial court stands modified as indicated above.

(Guman Singh),J. (Shiv Kumar Sharma)J.

arn/